EXPLANATORY MEMORANDUM TO
THE BRITISH CITIZENSHIP (DESIGNATED SERVICE) ORDER 2006

2006 No. 1390

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order designates certain "descriptions of service" under section 2(3) of the British Nationality Act 1981. It revokes, replaces and consolidates the 1982 Order (which has been amended several times since) and adds two additional categories of designated service.

2.2 The effect of designation is that a British citizen who is engaged in designated service outside the United Kingdom and qualifying territories (for which he was recruited in the United Kingdom or a qualifying territory), is able to pass on British citizenship to children born to him during such service. A further consequence is that his foreign spouse or civil partner may, at the discretion of the Secretary of State, be naturalised as a British citizen without satisfying the usual requirements as to residence in the United Kingdom.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Section 2(1) of the British Nationality Act 1981 (the 1981 Act), as amended by the British Overseas Territories Act 2002, provides that a person born outside the United Kingdom and the qualifying territories after 1 January 1983 will be a British citizen in certain circumstances, including where at the time of the birth his father or mother is a British citizen and is serving in designated service, recruitment for that service having taken place in the United Kingdom or a qualifying territory. Section 2(3) of the 1981 Act enables the Secretary of State to designate for these purposes (by order made by statutory instrument) "any description of service which he considers to be closely associated with the activities outside the United Kingdom of Her Majesty's government in the United Kingdom or in a qualifying territory".

4.2 Section 50(1) of the 1981 Act, as amended, defines "qualifying territory" as "a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia". A "British overseas territory" is a territory mentioned in Schedule 6 to the 1981 Act, that is Anguilla;

Bermuda; British Antarctic Territory; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; St Helena and Dependencies; South Georgia and the South Sandwich Islands; The Sovereign Base Areas of Akrotiri and Dhekelia; Turks and Caicos Islands; or Virgin Islands.

4.3 The Order revokes and replaces, with certain modifications, previous Orders under section 2(3) of the 1981 Act.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

5.2 It additionally applies to the Islands and all of the British overseas territories (the legislatures of which have not been consulted since they have no competence in matters relating to nationality and citizenship).

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The purpose of section 2(3) of the British Nationality Act 1981, under which the Order is made, is to ensure that British citizens engaged in certain types of activity outside the United Kingdom and the qualifying territories are not thereby disadvantaged in terms of the ability of their children and spouses or civil partners to acquire British citizenship. It accordingly enables the Secretary of State to designate such activities (or "descriptions of service"), with the consequences set out in paragraph 2.2 above.

7.2 The Secretary of State may only designate descriptions of service "which he considers to be closely associated with the activities outside the United Kingdom and the qualifying territories of Her Majesty's government in the United Kingdom or in a qualifying territory". It is not a mechanism for conferring British citizenship at Executive discretion: there must be a public interest in preventing the disadvantages referred to in paragraph 7.1 above.

7.3 Previous exercises of the power to designate have mainly followed representations received from employing organisations and other government departments. This Order follows a review of the previous practice and represents, we believe, a more rational and coherent exercise of the power. In particular, it designates as a generic category service under any international organisation of which the United Kingdom or Her Majesty's government in the United Kingdom is a member. Formerly, service under certain international organisations of this type was designated, but service under others was not. In addition,

service in respect of which the person concerned is on secondment from Crown service under the government of a qualifying territory is now designated (previously only service on secondment from Crown service under the government of the United Kingdom was designated).

7.4 It takes account of views expressed by, in particular, British citizens serving in institutions of the European Union and the Council of Europe.

8. Impact

8.1.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact

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